Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc., and	)	CC Docket No. 97-208
BellSouth Long Distance, Inc., for	)	
Provision of In-Region, InterLATA	)	
Services in South Carolina	)	

OPPOSITION OF ACSI

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SUMMARY

As an intended beneficiary of the market-opening incentives created by Section 271, ACSI has a direct stake in the outcome of BellSouth's Application. ACSI is a facilities-based CLEC which has been rapidly deploying local fiber optic networks across southern and southwestern United States. The Company already has constructed local fiber networks in eight of the nine BellSouth states, and has installed local exchange switches in four of BellSouth's local markets. However, the ultimate success of ACSI's foray into the local switched services market depends largely on BellSouth's willingness to interconnect effectively and compete fairly. Since neither of these conditions yet exists, BellSouth's Application must be denied. Without the incentive given to BellSouth by the prospect of interLATA entry, local exchange competition in South Carolina will be delayed indefinitely.

Importantly, BellSouth's Application is procedurally defective because BellSouth is ineligible for Track B entry. By the terms of the Act and prior Commission orders on the topic, Track B is available only when an RBOC has not received a request for facilities-based interconnection, or where no CLEC is taking reasonable steps to provide facilities-based local services. That simply is not the case in South Carolina. ACSI signed a region-wide local interconnection agreement with BellSouth in July 1996, and has been moving at a frantic pace to provide facilities-based local exchange services in eight of nine BellSouth states, including South Carolina. ACSI already has constructed local fiber networks in Greenville, Spartanburg, Columbia and Charleston, South Carolina, and is using those networks *today* to provide dedicated local services to hundreds of customers in the state. Critically, ACSI also has placed a firm order for the installation of a local exchange switch

in Greenville during the first quarter of 1998. As it has done in other BellSouth states over the past year, it will use its switch to provide switched local exchange services in South Carolina immediately after installation and testing are completed. Thus, with ACSI, and perhaps several other new entrants, moving aggressively toward implementing local interconnection agreements in South Carolina, BellSouth cannot invoke the Track B default method of entry - its application should be dismissed on that ground alone.

BellSouth's Track B Application also is defective because it relies on an SGAT that incorporates rates which are not cost-based, as required by the Act. Critical unbundled loop rates incorporated into BellSouth's South Carolina SGAT are taken from the company's interconnection agreement with ACSI. However, the underlying rates are *interim* rates established without reference to cost and are subject to true-up after state commission costing proceedings are completed. Indeed, some such rates are tied directly to rate-of-return based tariff rates. Thus, in the absence of statutorily required cost-based rates, BellSouth's SGAT cannot support a Track B filing.

Even if BellSouth could be heard under Track B, its application should be denied because the company has not implemented critical components of the Section 271 "competitive checklist". ACSI has been ordering unbundled local loops and associated facilities from BellSouth for over a year. In ACSI's direct experience, BellSouth continues to be either unable or unwilling to provide unbundled local loops reliably. As BellSouth's own auditors have confirmed, BellSouth's provisioning of unbundled elements and local resale services remains a "hit or miss" proposition at best.

Finally, approval of BellSouth's premature application simply is not in the public interest. Throughout its service territory, BellSouth has been quick to sign local interconnection agreements and exceedingly slow to implement them. In fact, the signing of an interconnection agreement often serves only to trigger BellSouth's efforts to employ various anticompetitive sales strategies and tactics. Once its Section 271 application is approved, the Commission will lose its most formidable lever for ensuring that BellSouth cooperates in opening the local market in South Carolina to competition. For these reasons, ACSI respectfully submits that BellSouth's Application is grossly premature, and should be denied.

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To: The Commission

OPPOSITION OF ACSI

American Communications Services, Inc. and its South Carolina operating subsidiaries, (collectively, "ACSI" or the "Company"), by their attorneys, respectfully submit the following opposition to the Application by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. (collectively, "BellSouth") for authority to provide in-region, interLATA services in South Carolina pursuant to Section 271 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). As explained below, ACSI believes that BellSouth's Application is premature and must be denied because: (1) BellSouth is ineligible for "Track B" entry in South Carolina as it has received at least one request for interconnection (from ACSI) that, when fully implemented, will lead to the provisioning of competing local telephone service of the type described in "Track A"; (2) BellSouth's statement of generally available terms and conditions ("SGAT") lacks cost-based prices for key unbundled network elements ("UNEs") that are required by the Act and the Federal Communications Commission's ("FCC" or "Commission") rules and policies; (3) BellSouth does not comply with the 14-point competitive checklist; and (4) BellSouth's premature entry into the interLATA market is not in the public interest.

I. INTRODUCTION

A. ACSI Is a Facilities-Based Competitor in South Carolina

ACSI provides integrated local voice and data communications services in mid-sized metropolitan markets primarily in the southern and southwestern United States. ACSI's business strategy is based on supplying customers with advanced telecommunications services through its digital SONET-based fiber optic local networks. As of September 30, 1997, ACSI had completed construction of local fiber networks in 32 markets and had nine local exchange switches in operation. ACSI plans to install a total of 16 local exchange switches by year end.[1]

With many of its markets situated in BellSouth's service territory, ACSI has an acute interest in the irreversible opening of BellSouth's local exchange markets to competition. ACSI currently competes with BellSouth in local markets in all but one state in the BellSouth service territory.[2] Within this territory, ACSI provides a broad array of advanced

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[1] *Affidavit of James C. Falvey*, ¶ 2 (attached hereto as Exhibit 1) (hereinafter, *"Falvey Aff."*).

[2] Although ACSI provides certain data transmission facilities in North Carolina, it has not yet deployed facilities there for transmission of basic telecommunications services. ACSI has constructed its own local network facilities in every other BellSouth state.

telecommunications services including data services and dedicated local services to businesses, and local switched voice services to business and residential customers.[3]

ACSI took its initial step toward providing local telecommunications services in South Carolina in 1994 when it sought permission to use public rights-of-way in Greenville and Columbia to construct fiber optic facilities. The Company soon expanded its construction plans to include Charleston and Spartanburg. ACSI applied to the South Carolina Public Service Commission ("SCPSC") in early 1995 for authority to provide limited dedicated intrastate services. After delaying action on ACSI's application for over six months, the SCPSC approved ACSI's application on August 31, 1995, but then deferred the effective date of ACSI's authorization until February 1, 1996.[4] ACSI's local fiber networks in Greenville and Columbia became operational in 1995, and its fiber networks in Charleston and Spartanburg have since become operational as well. ACSI currently provides, or actively is implementing plans to provide, a wide range of local telecommunications services in each of these markets, including dedicated and private line, high-speed data services, IP switching and managed services, local switched voice services, and Internet services. Indeed, a total of

[3] As explained below, due to BellSouth's pricing of unbundled local loops ("ULLs"), ACSI's provisioning of services to residential end-users currently is limited to circumstances where it provides service to multi-tenant dwelling units ("MDUs") operators and shared tenant services ("STS") providers that, in turn, connect residential customers to ACSI's switched local service offerings. ACSI also provides dial-up Internet services to residential end-users in Florida.

[4] Thus, by slow-rolling ACSI's application, the SCPSC effectively sheltered BellSouth from facing even limited dedicated local services competition by more than a year, a circumstance which may shed light on the SCPSC's surprising recommendation to approve BellSouth's Application in this proceeding.

42 office buildings/parks already are on-net and "lit" by ACSI in South Carolina, and the number is growing steadily.[5]

ACSI's entry as a full-fledged facilities-based competitor in South Carolina is assured by its firm order for a Lucent 5ESS switch and associated equipment that will be installed in Greenville during the first quarter of 1998. The Company also has initiated the negotiation of related collocation arrangements at BellSouth end offices, and is in the process of requesting assignment of NNX codes for use in the Greenville switch. In combination with its existing fiber network facilities, ACSI's Greenville switch will enable it to provide switched local services to existing and new customers in the Greenville area immediately. ACSI plans to use the switch later to provide local switched services in other South Carolina cities by back-hauling traffic to Greenville as necessary. The Company already provides local switched services to hundreds of customers with thousands of lines in South Carolina through resale. ACSI will begin migrating these customers and lines to its own facilities-based service when its local switch is installed early next year.[6]

Initially, ACSI will offer local switched services primarily to business customers in South Carolina. However, as it has done elsewhere in BellSouth's territory, ACSI will welcome profitable opportunities to provide service to MDU and STS locations which may include residential consumers. In addition, ACSI is interested in offering its switched facilities-based local services on a wider scale to residential customers in South Carolina

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[5] *Falvey Aff.*, ¶ 4.

[6] *Id.*, ¶ 5.

when an economic ULL pricing structure is made available.[7] As explained below, the SCPSC currently is considering requests by ACSI and other competitors that it eliminate the residential service cost-price squeeze created by BellSouth's statewide averaged and prohibitively high rates for ULLs.[8] ACSI will reassess the economic feasibility of providing widespread local service to individual residential customers in South Carolina after permanent rates have been established by the SCPSC.[9]

B. BellSouth Is Both ACSI's Most Critical Supplier and Most Formidable Competitor

As a facilities-based local exchange competitor to BellSouth, ACSI's interest in this proceeding is unique. Unlike IXCs that likely will comment on BellSouth's Application, ACSI is not motivated by a desire to protect long distance market share.[10] Rather, ACSI is focused squarely on capturing local market share — from BellSouth.

ACSI requested local interconnection arrangements from BellSouth on a region-wide basis immediately after passage of the Act. ACSI and BellSouth signed a partial agreement

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[7] Notably, ACSI acquired Cybergate, an Internet Service Provider ("ISP"), earlier this year. The Cybergate acquisition gives ACSI access to thousands of dial-up residential Internet customers which logically and potentially could be migrated to ACSI residential services. *Id.*, ¶ 20.

[8] As explained later herein, the residential service cost-price squeeze is created by BellSouth's current South Carolina ULL pricing policy which sets ULL prices at levels that exceed its basic residential service rates, thereby making it uneconomic for facilities-based competitors to serve individual residential customers at this time.

[9] *Id.*, ¶ 19. In every BellSouth state in which ACSI operates, the ULL rate exceeds the basic residential rate for local service. *Id.*, ¶ 14.

[10] Although ACSI offers selected interexchange services, such long distance services currently are offered as an adjunct to its primary local service offerings.

providing local interconnection and access to UNEs, including ULLs, on July 25, 1996.[11] However, since the parties were unable to agree on several important issues — including the pricing of ULLs[12] — ACSI petitioned for state commission arbitration of the disputed points in South Carolina and seven other BellSouth states.[13] ACSI believed that the absolute rate levels quoted by BellSouth for ULLs greatly exceeded cost, and objected strongly to BellSouth's refusal to deaverage ULL rates by geographic zone.[14] Before any of these state arbitration proceedings were decided, ACSI and BellSouth agreed on October 17, 1997 to an interim solution to settle their differences and incorporated it in an amendment to their interconnection agreement.[15]

The ACSI/BellSouth Interconnection Agreement Amendment establishes *interim* ULL rates subject to a "true-up" based on the conclusion of state commission proceedings which will establish industry-wide cost-based rates for UNEs in each BellSouth state.[16] The non-recurring connection charges for ULLs were established via cross-reference to

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[11] The ACSI/BellSouth Interconnection Agreement is attached to BellSouth's Application at *BellSouth Appendix C* (hereinafter, *"ACSI/BellSouth Interconnection Agreement"*).

[12] As a facilities-based CLEC, the use of BellSouth ULLs to connect to individual end-users is a critical component of ACSI's network implementation and market entry strategy. *Falvey Aff.*, ¶ 6.

[13] *Id.*, ¶ 7.

[14] *Id.*

[15] *Amendment to ACSI/BellSouth Interconnection Agreement*, Oct. 17, 1996 (attached hereto as Exhibit 2) (hereinafter, *"ACSI/BellSouth Interconnection Agreement Amendment"*).

[16] *Id.*, ¶¶ 2-4.

BellSouth's *tariffed* business connection charges for comparable local exchange services.[17] Recurring ULL rates were established by importing the FCC-designated "proxy ceiling" rate for ULLs[18] for each BellSouth state and *rounding them upward* to the next whole dollar amount.[19] For example, in South Carolina, the FCC's $17.07 *statewide weighted average proxy ceiling* for ULLs was *rounded-up* to $18.00.[20] None of these rates were based upon cost information supplied by BellSouth, and ACSI agreed to them on the express understanding that (1) they would be applied on an *interim* basis, and (2) that they would be trued-up after cost-based rates were established in state commission cost dockets.[21] ACSI agreed to this approach principally to avoid further costly delay in implementing its plans to begin offering facilities-based local switched services across the BellSouth region.[22]

Soon thereafter, state commissions across the BellSouth service territory, including the SCPSC, approved the ACSI/BellSouth Interconnection Agreement, as amended. To

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[17] The non-recurring charges for ULLs were set at 80 percent of the tariff rate level. *Id.*, at Attachment C-2.

[18] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16221-22, *First Report and Order* (1996) ("*Local Competition Order*").

[19] *Falvey Aff.*, ¶ 8.

[20] *Local Competition Order*, at 16221-22. The interim ULL rates did not reflect the FCC's intention that ULL rates be deaveraged into at least three geographic zones. *Id.*, ¶¶ 764-65.

[21] *ASCI/BellSouth Interconnection Agreement Amendment*, ¶¶ 2-4.

[22] *Falvey Aff.*, ¶ 8.

complement its facilities-based/UNE entry strategy, ACSI also sought and entered into a regional local resale agreement with BellSouth in December 1996.[23]

With these agreements in place, ACSI entered local markets throughout the South. At considerable expense, ACSI has collocated equipment in BellSouth end offices and purchased ULLs, other UNEs and wholesale services from BellSouth. BellSouth's residual monopoly control over local bottleneck facilities has made it ACSI's most critical supplier. At the same time, BellSouth is ACSI's most formidable competitor. Each customer signed by ACSI is a customer taken from BellSouth. Thus, ACSI is dependent on BellSouth's provisioning of UNEs to serve the very customers it captures from BellSouth. It is this unique tension that makes ACSI particularly vulnerable to anticompetitive activity by BellSouth and dependent on BellSouth's progress in opening markets to local competition.[24]

In short, the timely and seamless provisioning of ULLs by BellSouth at cost-based rates is fundamental to the success of ACSI's facilities-based entry strategy. However, as explained below, BellSouth's provisioning of ULLs across its service territory to date has been neither timely nor seamless, and has not been offered at cost-based rates. Moreover, BellSouth's provisioning of interim number portability ("INP"), unbundled interoffice transport and operational support systems ("OSS") continues to be inadequate and unreliable. Thus, ACSI believes that BellSouth's Application is grossly premature.

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[23] *Id.*, at ¶ 9. ACSI has and will continue to resell BellSouth's services to complement its facilities-based offerings and to serve and build a customer base in advance of facilities installation. However, resale is neither ACSI's primary nor its long term focus. Indeed, ACSI believes that resale of local services alone cannot be profitable in anywhere BellSouth's service territory. *Id.*

[24] *Id.*, ¶ 21.

C. BellSouth's Application Should Be Denied

Because BellSouth has not taken the steps necessary to make facilities-based competition possible in South Carolina, ACSI requests that the Commission deny BellSouth's Application. ACSI was an active participant in the SCPSC's Section 271 review proceeding, wherein ACSI demonstrated the following.

(1) ACSI has constructed local fiber networks in four South Carolina cities and plans to turn-up a switch in South Carolina in early 1998.[25]

(2) BellSouth is ineligible for Track B entry.[26]

(3) BellSouth's pricing policies have created a cost-price squeeze that makes it uneconomic for facilities-based competitors to serve the residential market.[27]

(4) BellSouth has not properly implemented its interconnection agreement with ACSI in Georgia and other BellSouth states.[28]

(5) Regionally, BellSouth has not provided ULLs, INP or OSS in compliance with the Section 271 checklist.[29]

(6) Regionally, BellSouth has not provided parity in installation intervals.[30]

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[25] *Testimony of James C. Falvey Before the SCPSC*, SCPSC Docket No. 97-101-C, at 326, 357, 360 (July 10, 1997) (hereinafter, *"Falvey SCPSC Testimony"*) (attached to BellSouth's Application at *BellSouth Appendix C*).

[26] *Brief of American Communications Services, Inc.*, SCPSC Docket No. 97-101-C, at 7-9 (July 22, 1997) (hereinafter, *"ACSI SCPSC Brief"*) (attached to BellSouth's Application at *BellSouth Appendix C*); *Falvey SCPSC Testimony*, at 329.

[27] *ACSI SCPSC Brief*, at 8; *Falvey SCPSC Testimony*, at 332.

[28] *ACSI SCPSC Brief*, at 5-7; *Falvey SCPSC Testimony*, at 333-42.

[29] *ACSI SCPSC Brief*, at 9; *Falvey SCPSC Testimony*, at 333-42.

[30] *Falvey SCPSC Testimony*, at 342.

(7) BellSouth is engaging in systematic anticompetitive activities that are impeding ACSI's ability to compete effectively in the market for local services.[31]

(8) Approval of BellSouth's entry into the interLATA market is not in the public interest at this time.[32]

Nevertheless, ACSI was unable to persuade the SCPSC which (1) ignored ACSI's imminent South Carolina facilities-based entry, (2) seemed narrowly focused on the absence of facilities-based entry by AT&T, MCI and Sprint,[33] and (3) seemed convinced that its recommended approval of BellSouth's interLATA entry somehow would spur the major IXCs to build local exchange facilities in South Carolina and would otherwise encourage local competition (despite the fact that every potential local competitor, including ACSI and the IXCs, disagreed).[34]

Recognizing that the Commission need only "consult" with the SCPSC,[35] ACSI herein restates and supplements its case for review and consideration by the FCC and the

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[31] *ACSI SCPSC Brief*, at 10-11; *Falvey SCPSC Testimony*, at 20-24, 25-26.

[32] *ACSI SCPSC Brief*, at 10-11; *Falvey SCPSC Testimony*, at 328-29.

[33] *See In re Entry of BellSouth Telecommunications, Inc. Into InterLATA Toll Market*, SCPSC Docket No. 97-101-C, Order No. 97-640, *Order Addressing Statement and Compliance with Section 271 of the Telecommunications Act of 1996*, at 66-67 (July 31, 1997) (hereinafter, *"SCPSC Order"*) (attached to BellSouth's Application at *BellSouth Appendix C*).

[34] *See id.*, at 7, 66-67.

[35] 47 U.S.C. § 271(d)(2)(B); *see also In the Matter of Ameritech Michigan Application Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, *Memorandum Opinion and Order*, ¶ 30 (rel. Aug. 19, 1997) (hereinafter, *"Ameritech Michigan Order"*) (explaining that the Commission will consult with the relevant state commission and will carefully consider that commission's determinations of fact, but emphasizing that it is the *FCC's* role "to determine whether the factual record supports a conclusion that particular requirements of section 271 have been met").

Department of Justice ("DOJ"). Significantly, ACSI now can affirmatively state that it will deploy a Lucent 5ESS switch in Greenville, South Carolina *in the first quarter of 1998.*[36] In addition, evidence that BellSouth has failed to implement its interconnection agreement with ACSI already has been submitted to the Commission during the course of a formal complaint proceeding concerning ULL provisioning problems in Georgia,[37] but important evidence developed therein could not be disclosed to the SCPSC because it is protected by the Commission's confidentiality rules. However, some of this previously protected information — which reveals the devastating conclusions of BellSouth's own audit of its two local competition service centers ("LCSCs") — recently has been made public during the Florida Public Service Commission's review of BellSouth's Section 271 entry application in that state and will be included herein. Finally, as ACSI implements its market entry strategy in South Carolina, it has been able to accumulate additional evidence of systematic anticompetitive activity by BellSouth.

II. BELLSOUTH IS INELIGIBLE FOR TRACK B ENTRY

ACSI submits that the Commission should dismiss BellSouth's Application on the basis that it erroneously seeks Track B entry for which BellSouth is ineligible. Section 271(c)(1)(B) allows a BOC to seek entry under Track B if "no [potential] provider has requested the access and interconnection described in [section 271(c)(1)(A)]" and the BOC's

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[36] *Falvey Aff.*, ¶ 5.

[37] *American Communications Services, Inc. v. BellSouth*, File No. E-97-09 (filed Jan. 6, 1997) (public versions of ACSI's Initial Brief and Reply Brief in this matter are attached hereto as Exhibits 3 and 4, respectively).

SGAT has been approved or permitted to take effect by the applicable state commission.[38] ACSI, however, has requested access and interconnection that, if fully and properly implemented, would satisfy Track A. Accordingly, Track B is unavailable on that count alone. BellSouth's Application also should be denied on the basis that its SGAT, although approved by the SCPSC, is largely devoid of cost-based rates that are required by the Act and the Commission's rules and policies.

A. BellSouth Has Received At Least One "Qualifying Request" for Interconnection That Forecloses Track B Entry

In its *SBC Oklahoma* decision, the Commission concluded that the presence of a facilities-based competitor that has requested access and interconnection of the type described in Track A effectively disables Track B.[39] The Commission concluded "that a 'qualifying request' under section 271(c)(1)(B) is a request for negotiation to obtain access and interconnection that, if implemented, would satisfy the requirements of section 271(c)(1)(A)."[40] Cognizant that it would take time for facilities-based competitors to secure interconnection agreements and install facilities (and that it also would take time for the RBOCs to make OSS available and implement agreements), the Commission explained that a qualifying request need only be submitted by a "*potential* provider of telephone exchange

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[38] 47 U.S.C. § 271(c)(1)(B).

[39] *In the Matter of SBC Communications, Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Oklahoma*, CC Docket No. 97-121, *Memorandum Opinion and Order*, ¶ 27 (rel. June 26, 1997) (hereinafter, "*SBC Oklahoma Order*").

[40] *Id.*

service to residential and business subscribers."[41] Thus, the Commission already has held that Track B entry will be foreclosed to a BOC that has received a request for access and interconnection that, if implemented, would result in the facilities-based provisioning of telephone service to business and residential customers.[42] Invoking its own standard, BellSouth erroneously claims that it may proceed under Track B because no facilities-based CLEC has taken reasonable steps toward providing *residential* service in South Carolina.[43] Thus, the Commission once again must determine whether a BOC has received a "qualifying request" that would bar it from proceeding under Track B.[44]

1. ACSI Has Made a Qualifying Request

ACSI submits that it has made a qualifying request to BellSouth in South Carolina. ACSI entered into a region-wide interconnection agreement with BellSouth on July 25, 1996. The ACSI/BellSouth Interconnection Agreement provides local interconnection and access to UNEs, including ULLs. After commencing arbitration proceedings in South Carolina and elsewhere in the BellSouth region, ACSI and BellSouth reached a negotiated settlement on critical pricing issues whereby the parties agreed that ACSI would accept interim BellSouth ULL rates subject to a "true-up" based upon the results of state commission cost dockets.

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[41] *Id.*, at ¶¶ 27 (emphasis added), 34 and 43-45.

[42] *Id.*

[43] *Brief In Support of Application by BellSouth for Provision of In-Region, InterLATA Services in South Carolina*, at 5-15 (hereinafter, *"BellSouth Brief"*).

[44] *See SBC Oklahoma Order*, ¶ 27.

State commissions across the BellSouth service territory, including the SCPSC, approved the ACSI/BellSouth Interconnection Agreement.

With this agreement in place, ACSI began entering local markets throughout the South. ACSI installed its first local exchange switch in Columbus, Georgia in late 1996, and since has deployed additional local exchange switches in other states at a feverish pace. In little more than a year, ACSI has completed construction of fiber optic rings in 32 cities and is on track to complete installation of 16 local exchange switches. Indeed, within the BellSouth territory, ACSI already has added local switches in Columbus, Georgia, Birmingham and Montgomery, Alabama, Louisville, Kentucky and New Orleans, Louisiana during 1997. These switches are being used today to provide a wide variety of local exchange services.[45]

Although ACSI's business strategy focuses primarily on business customers, ACSI also will provide facilities-based service to residential callers through MDUs and STS providers where it makes economic sense. For example, soon after deploying its local exchange switch in Birmingham, ACSI began providing facilities-based local exchange services to an STS property that serves residential end-users. In that location, ACSI is able to provide a high capacity connection to the concentration equipment of the STS provider who, in turn, arranges service to its individual residential tenants.[46]

In South Carolina, ACSI already provides dedicated, facilities-based local services to hundreds of customers located in scores of office buildings in four separate metropolitan

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[45] *Falvey Aff.*, ¶ 10.

[46] *Id.*, ¶ 11.

areas. With the installation and testing of its Greenville switch in the first quarter of 1998, ACSI immediately will begin to provide facilities-based switched local services to customers it currently serves via resale, and will and will continue to aggressively market its local switched services in South Carolina. Importantly, as has been the case in other BellSouth states where ACSI has installed switch equipment, the Lucent 5ESS switch that ACSI will install in Greenville will give ACSI the technical capability to provide facilities-based local telephone services to both business and residential customers in all four of its South Carolina markets.[47]

Importantly, nothing in the ACSI/BellSouth Interconnection Agreement suggests that it must be implemented solely for the purpose of serving business customers.[48] Although ACSI's initial entry strategy focuses on providing service to business customers, ACSI is interested in providing facilities-based services to residential customers wherever it can do so profitably. ACSI's provisioning of facilities-based services to an STS provider with residential end-users in Alabama illustrates this point.[49] However, as ACSI explained to the

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[47] *Id.*, ¶ 12. In addition, ACSI recently entered into an agreement to lease a defined amount of its network capacity in Greenville to another CLEC. The CLEC involved already serves a base of local resale customers which, according to that CLEC, is comprised of approximately 10-15 percent residential customers. That CLEC has informed ACSI that the residential customers involved will be migrated via ULLs to the CLEC's leased (from ACSI) network if ULL rates are lowered to economic levels. *Id.*

[48] The ACSI/BellSouth Interconnection Agreement provides that the interconnection accomplished thereby is required to "facilitate the introduction of local exchange competition" without limitation to business, residential or other markets. *ACSI/BellSouth Interconnection Agreement*, at 1.

[49] ACSI's capability to provide local exchange services to residential customers also is evidenced by the fact that its tariff in Colorado expressly obligates the Company to provide local exchange services to all residential consumers who request it in the ACSI service areas in that state. *Falvey Aff.*, ¶ 13.

SCPSC, BellSouth's current pricing policies for ULLs and other UNEs have created a cost-price squeeze that currently makes it economically infeasible to serve individual residential customers directly in South Carolina.[50]

2. BellSouth's Creation of a Residential Cost-Price Squeeze Is Forestalling the Development of Facilities-Based Residential Services

ACSI must purchase ULLs and related facilities from BellSouth to provide facilities-based local exchange services to individual residential customers. While ACSI is able to replace BellSouth's interoffice transport facilities, tandem switching, local switching and signaling over time, there currently is no economic substitute for the ubiquitous local loop constructed by BellSouth with a century-long monopoly revenue stream. The out-of-pocket cost to ACSI of purchasing ULLs from BellSouth constitutes a direct cost of service to ACSI. In order to provide residential services profitably, ACSI must be able to recoup both the cost of purchasing ULLs from BellSouth and the cost of its own network and overhead in its retail pricing for residential services. At the same time, the market demands that ACSI's retail prices charged to end-users must be established at or below the rates charged by BellSouth to end-users for comparable services.[51]

Unfortunately, BellSouth currently demands a price for ULLs and associated facilities that exceeds the corresponding price charged by BellSouth for residential retail local exchange services. Specifically, in order to serve a residential customer, ACSI currently must pay BellSouth $18.00 monthly for a 2-wire loop plus $0.30 for the cross-connect and

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50 *See Falvey Testimony*, at 332-33.

51 *Falvey Aff.*, ¶ 15.

$1.15 for INP. *ACSI's per-line out-of-pocket cost to BellSouth is $19.45*, even *before* ACSI pays for collocation and its own network and overhead, and even *without* accounting for sizeable nonrecurring service order and installation charges assessed by BellSouth.[52] By contrast, *BellSouth's retail price for basic residential service in South Carolina is only $16.45*. Since ACSI must purchase ULLs from BellSouth at a cost that alone exceeds BellSouth's residential retail rates, neither ACSI nor any other CLEC currently is able provide residential service in South Carolina profitably. Consequently, BellSouth's current ULL pricing creates a cost-price squeeze which constitutes a barrier to entry for potential providers of facilities-based residential services.[53]

To remove this barrier to entry, BellSouth would have to lower its prices for ULLs and related UNEs substantially. Importantly, this dilemma is derivative of the *interim* rates offered to ACSI by BellSouth. There is no reason that such a cost-price squeeze must be a permanent condition of the market. The interim rates which ACSI accepted in order to be able to begin providing service were established *without* reference to TELRIC costing principles. They also suffer from the fact that the rates apply *statewide*, and are *not deaveraged* to reflect the network efficiencies realized by BellSouth in the urban centers where ACSI competes. Both of these failings can be cured either by BellSouth's voluntary filing of truly cost-based, deaveraged ULL rates, or by the adoption by the SCPSC of such

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[52] The applicable interim non-recurring charges total $59.20 per ULL combined. Assuming that customers churn on average every two years, this raises the effective monthly ULL cost to **$21.92** [($59.20 NRC divided by 24) + $19.45]. *Id.*, ¶ 16.

[53] *Id.*, ¶ 17. By contrast, in mid-1996, Ameritech voluntarily offered ULL rates in the $9.00 range in Michigan. Brooks Fiber responded by enlisting more 5,000 residential access lines in less than a year. *See Ameritech Michigan Order*, ¶ 65.

ULL rates. Indeed, the SCPSC has recently initiated a generic cost docket that is examining these precise issues. BellSouth suggests that the SCPSC will conclude that docket in January.[54] Thus, BellSouth's filing of a Section 271 application prior to the conclusion of related state UNE costing proceedings amounts to "jumping the gun."[55] As the Commission itself recently indicated, the establishment of TELRIC-based, deaveraged ULL rates should be a precondition to the approval of any Section 271 application.[56]

3. BellSouth's Self-Imposed Foreclosure of Track A Entry Should Not Enable It To Invoke Track B as a Default Method of Entry

Having erected a barrier that effectively is forestalling the development of competing facilities-based residential service offerings, BellSouth audaciously and erroneously asserts that it may proceed under Track B because no CLEC is taking reasonable steps toward providing facilities-based residential service in South Carolina.[57] This theory, however, is

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[54] *See BellSouth Brief*, at 33.

[55] The Georgia PSC, Louisiana PSC and the Alabama PSC each have come to the same conclusion by foregoing making final recommendations on BellSouth's Section 271 applications until completion of costing dockets. *See In Re Bellsouth Telecommunications, Inc.'s Statement of generally Available Terms and Conditions*, Georgia PSC Docket No. 7253-U, *Order Regarding Statement* (Mar. 20, 1997); *In Re Consideration of Review of BellSouth Telecommunications, Inc. Preapplication Compliance With Section 271*, Louisiana PSC Docket No. U-22252, *Order U-22252-A* (Sept. 5, 1997); *In Re Petition for Approval of Generally available Terms*, Alabama PSC Docket No. 25835, *Order* (Oct. 16, 1997).

[56] *See Ameritech-Michigan*, ¶ 292.

[57] *BellSouth Brief* at 4-5, 8. BellSouth's reliance on ¶¶ 57-58 of the Commission's *SBC Oklahoma* order is misplaced. There, the Commission discusses the possibility of *revisiting* a decision that Track B is foreclosed in a particular state. *SBC Oklahoma Order*, ¶ 58 (emphasis added). Specifically, the Commission stated that "if following such a determination a BOC refiles its section 271 application, we may *reevaluate* whether it is entitled to proceed under Track B in the event relevant facts demonstrate that none of its

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